SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1969

No. 454

DANTE MARTIRE, *Petitioner,*

vs.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Third Circuit, filed in the subject case on April 17, 1969.

Opinions Below

The Opinion of the District Court for the Western District of Pennsylvania is attached hereto as Appendix "A".

The Opinion of the Third Circuit Court of Appeals is reported at *Martire vs. Laborers' Local Union 1058*, 410 F. 2d 32 (1969).

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on April 17, 1969.

Upon Motion, the Supreme Court of the United States, Justice William J. Brennan, Jr., granted an extension of time to August 15, 1969 for the filing of the subject Petition for Writ of Certiorari.

Jurisdiction of this Court is invoked by virtue of 28 U. S. C. Sections 1254 (1) and 2101.

Questions Presented

1. Does a District Council, an intermediate labor organization between the International Union and a Local Union, have the authority or power to remove a Local Union officer from his elected office?

2. Did the District Council violate the Local Union officer's membership rights protected by the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U. S. C. A. § 401, *et seq.*) by (a) suspending him from his office in the Local Union prior to the expiration of his three-year elected term; (b) barring him from holding office in the Local Union for five years; and (c) imposing a fine of Five Hundred and no/100 ($500.00) Dollars upon him?

Was the Local Union member-officer denied the statutory safeguards against improper disciplinary action provided for in Section 101 (a) (5) of the L. M. R. D. Act of 1959 [29 U. S. C. A. § 411 (a) (5)] when he was not afforded a

full and fair hearing by members of his Local Union pursuant to the requirements of the Local Union Constitution and By-Laws?

Statutes Involved

Section 101 (a) (5 of L. M. R. D. Act of 1959, 73 Stat. 523, 29 U. S. C. A. § 411 (a) (5).

Section 609, 73 Stat. 541, 29 U. S. C. A. § 529, L. M. R. D. Act of 1959.

Section 401 (h), 73 Stat. 533, 29 U. S. C. A. § 481 (h), L. M. R. D. Act of 1959.

Statement

Petitioner, Dante Martire, a member in good standing of Laborers' Local Union 1058 since 1938, was elected to the office of business manager by members of his Local Union for a three-year term which expired on June 1, 1968.

On September 26, 1967, petitioner was removed and suspended from his office as business manager of Local 1058, prohibited from holding any office in his Local for five years and fined Five Hundred and no/100 ($500.00) Dollars. This disciplinary action was taken by the District Council, not by members of his Local Union, upon charges filed by three delegates to the District Council. At the time of the District Council's action, the Local Union was not placed in Trusteeship.

The Local Union Constitution and By-Laws were bypassed and petitioner was charged and tried by the District Council, a parent body.

Petitioner, having exhausted his internal union appeal procedures, filed a Complaint in the United States District

Court for the Western District of Pennsylvania on February 28, 1968. On March 25, 1968, after a non-jury trial, the District Court ordered and directed that petitioner be reinstated as business manager of Local Union 1058, and be reimbursed for all wages or income, pension, welfare, insurance and other fringe benefits pertinent to his office as business manager of Local Union 1058 from and after September 26, 1967.

The District Court held, *inter alia,* that, "the removal of petitioner as business manager of Local Union 1058 by the officers thereof, without prior proceedings by the Local or a vote of the members," was in violation of 29 U. S. C. A. § 411 (a) (5) citing the Ninth Circuit Court of Appeals decision in *Grand Lodge of I. A. M. vs. John J. King, et al.,* 355 F. 2d 340 (1964) as authority.

On appeal to the Third Circuit of Appeals, the Circuit Court on April 17, 1969 held:

(a) That the Labor-Management Reporting and Disclosure Act of 1959 (L. M. R. D. A.) affords a remedy to an officer of a Local Union who has been disciplined in violation of his membership rights.[1]

(b) That the District Council did have authority to take action against an officer of a Local Union.[2]

(c) That the procedural safeguard requirements of the L. M. R. D. A. were complied with by the District Council's proceeding against the petitioner.[3]

---

[1] The Circuit upheld the District Court on the question of jurisdiction over the subject matter but restricted its reasoning and denied petitioner relief.

[2] The Circuit disagreed with the District Court on this issue.

[3] The Circuit disagreed with the District Court on this issue. The District Court held that the procedural safeguard requirements of 29 U. S. C. A. § 411 (a) (5) were violated by Local Union 1058 when it removed petitioner from his office without a trial by the Local or without a vote of the Local Union members. (District Court opinion, Conclusion of Law No. 5. See Appendix "A".)

The Third Circuit Court of Appeals has decided a very important labor relations issue which is in conflict with other Circuit Courts of Appeal. The issue can be restated as follows: Whether a separate autonomous labor organization (a District Council) is permitted to charge, try and remove from office, elected officers of another separate autonomous labor organization (Local Union 1058), absent the imposition of a Trusteeship in accordance with Title III (29 U. S. C. A. § 461, *et seq.*) of the Labor-Management Reporting and Disclosure Act of 1959? Does this action violate Section 411 (a) (5) of Title 29 U. S. C. A. of the L. M. R. D. Act of 1959 entitled "Safeguards against improper disciplinary action"?

The Third Circuit has, in the subject case, in effect held that a parent body whether it be a District Council or International Union has the authority or power, absent a Trusteeship arrangement, to charge, try and remove Local Union officers from their elected positions.

Notwithstanding, the Local Union Constitution and By-Laws which contain procedures for charges and trial of officers accused of misconduct and notwithstanding the specific statutory procedures set forth in Section 401 (h), 73 Stat. 533 [29 U. S. C. A. § 481 (h)] which provides a remedy for members of a Local Union to remove elected officers guilty of serious misconduct, the Third Circuit has given parent bodies unrestricted power to interfere into and usurp the democratic safeguards of local labor organizations.

Petitioner respectfully submits that Congress sought to curb or restrict the power of parent bodies over local labor organizations when it enacted 29 U. S. C. A. § 461 *Trusteeships* with its safeguards against dictatorial control and in

the passage of Title I, 29 U. S. C. A. § 411, *et seq. Bill of Rights* which protects the rights of members of labor organizations.

Reasons for Granting the Writ

1. The subject decision of the Third Circuit Court of Appeals establishes precedent for the right of a parent body to discipline a Local Union member-officer without a full and fair hearing by that member-officer's Local Union. The Circuit Court states in its opinion:

> *"We therefore conclude that Section 101 (a) (5) was in no way violated by the fact that the charges against Martire were tried before a trial board of the District Council rather than before a body of the Local Union."* [See p. 37 of 410 F. 2d (1969)]

2. The subject decision appears to be in conflict with the Second Circuit Court of Appeals in *Vars vs. Int. Bro. of Boilermakers,* 320 F. 2d 576 (1963) in which the Local Union was placed in *Trusteeship* before the International Union parent body tried Vars on charges of fraud. Vars was a member-officer of a Local Union. Relief was granted under Section 101 (a) (5) of Title I.

3. The subject decision appears to be in conflict with the Second Circuit Court of Appeals decision in *Salzhandler vs. Caputo,* 316 F. 2d 455 (1963) in which a member-officer of a Local Union was afforded protection and relief under 29 U. S. C. A. § 101 (a) (2) and § 609 of L. M. R. D. A.

4. Summary removal from union office of officers suspected of malfeasance by members of the Local Union or by officers of the Local Union is permitted. No violation of Section 101 (a) (5), 29 U. S. C. A. § 411 (a) (5) exists *if* the action is taken *by the Local Union* in accordance with

the Constitution and By-Laws of the Local or, in the absence of such provisions, for removal in accordance with 73 Stat. 533, 29 U. S. C. A. § 481 (h) by members of the Local Union. *Grand Lodge of I. A. M. vs. King,* 335 F. 2d 340 (1964).

It appears that the subject decision is in conflict with the Ninth Circuit Court of Appeals decision in *Grand Lodge of I. A. M. vs. King.*

5. The subject opinion of the Third Circuit seems to be at variance with its earlier opinion in *Sheridan vs. Carpenters,* 306 F. 2d 152, at pages 158-159 (CA3, 1962) in which the Court emphasizes the rights of union members to remove their own officers as being essential to the principle of democratic self-government. The Court stressed the fact that the member-officer was removed from his office as business agent by a *vote of the membership of the Local Union.*

6. The subject decision of the Third Circuit is contrary to the holding of the Second Circuit Court of Appeals in *Navarro vs. Gannon,* 385 F. 2d 512 (1967) which held, *inter alia,* where officers of International Union (a parent body) chose not to establish a Trusteeship according to procedures set forth in the Constitution and Title III of L. M. R. D. A., in the absence of such recourse, autonomy of Local Union should be Court's primary concern (Pages 518-519 of 385 F. 2d). Preservation of Local Union democracy and procedural safeguards against dictatorial control by parent bodies was the chief concern of Congress in the passage of the Labor-Management Reporting and Disclosure Act of 1959.

7. The subject decision of the Third Circuit appears to be contrary to the reasoning of the Fifth Circuit Court

of Appeals in *Allen vs. I. A. T. S. E.*, 338 F. 2d 309 (1964) in which it, *inter alia,* held that a Local Union could not discipline an International Union member-at-large because it had no jurisdiction over said member. The International Union only in accordance with its Constitution and By-Laws could hear the charges against its members-at-large and invoke disciplinary action. See also *Pittman vs. Carpenters,* 251 F. Supp. 323 (D. C. Fla.—1966) and *George vs. Bricklayers Union,* 255 F. Supp. 239 (E. D. Wis.—1966).

All of the above-cited decisions recognize the separation of powers principle to insure implementation of democratic procedures in labor organizations. Petitioner sincerely maintains that the Third Circuit Court of Appeals erred in its conclusion that a parent body (District Council) had the authority to try and discipline him rather than his Local Union.

Therefore, petitioner respectfully requests this Honorable Court to grant his Petition for Writ of Certiorari, in view of the conflicting opinions in the Circuit Courts on this important question.

Respectfully submitted,

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& WALSH,
3113 Grant Building,
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Dated: July 30, 1969.

APPENDIX "A"

Opinion and Order of Court

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil No. 68-259

DANTE MARTIRE,

Plaintiff,

vs.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Defendants.

Argued March 21, 1968.
Before The Honorable Herbert P. Sorg, *District Judge.*

FINDINGS OF FACT

1. Dante Martire is a member of Laborers' Local Union 1058, Pittsburgh, Pennsylvania.

2. One of the incidents of such membership is the right to be a candidate for and hold office or position in the Local Union. [Union Constitution, Article II, Section 2 (c).]

3. The defendants, Laborers' Local Union 1058 and Laborers' District Council of Western Pennsylvania, are labor organizations which maintain their principal offices and places of business within the Western District of Pennsylvania.

4. Defendants, Thomas J. Pecora and Louis Elise are president and secretary-treasurer, respectively, of Laborers' Local Union 1058, residing within the Western District of Pennsylvania.

5. On September 26, 1967, Dante Martire was the duly elected business manager of Local Union 1058, and also delegate and member of the Board of Trustees of Laborers' District Council of Western Pennsylvania.

6. On September 26, 1967, Martire was fined the sum of $500.00, and was ordered removed and suspended from office as business manager of Local 1058 and as delegate and board member of Laborers' District Council of Western Pennsylvania, for a term of five years, for "negligence and incompetence" in connection with the enforcement of certain terms of an agreement between the Union and the Construction Association of Western Pennsylvania.

7. The above disciplinary action was the result of proceedings initiated by the Laborers' District Council in accordance with the terms of the Constitution and By-Laws of said District Council, and no procedural objections have been made.

8. The grounds for disciplinary action processed by the District Council are supported by substantial evidence.

9. The plaintiff, Dante Martire, has complied with all legal requirements concerning the exhaustion of internal union remedies, including an unsuccessful appeal to the Laborers' International Union, without success.

10. Local Union 1058 did not vote or conduct any proceedings concerning the charges made against Martire by the District Council.

11. Martire was removed from office by the officers of Local Union 1058, solely upon the order of the District Council above referred to.

12. The Laborers' International Union of North America, the District Council, and Local Union 1058, are affiliated, but governed by separate Constitutions and By-Laws.

13. The District Council is delegated the power to negotiate agreements with employers in behalf of all Local Unions, including Local 1058, and "to exercise disciplinary power over all infractions or noncompliance" concerning such agreements. Unless this power implies such a right, the District Council is not delegated the right to discipline officers and members of a Local Union.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter under the provisions of 29 U. S. C. A. 412.

2. The International Union, having acted in an appellate capacity only, is not an indispensable party to this action.

3. The delegation by Local 1058 to the District Council of the right to exercise disciplinary power in connection with the enforcement of agreements does not impart the right to remove an officer of such Local Union. "Any provision of the constituton and by-laws of any labor organization, which is inconsistent with the provisions of this section [29 U. S. C. A. 411, Section (5)] shall be of no force and effect." 29 U. S. C. A. Section (5) (b). The

method of assuring the performance of collective bargaining agreements by a subordinate organization is available to the superior organization through Title III of the Labor-Management Reporting and Disclosure Act, 29 U. S. C. A. 462.

4. The removal of a member from an office to which he was duly elected by the members of his Local Union constitutes the discipline of a member within the meaning of 29 U. S. C. A. Section (5) (a) which reads as follows:

> "(5) Safeguards against improper disciplinary action.
>
> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

Grand Lodge of the International Association of Machinists, etc., et al. v. John J. King, Earl N. Anderson, et al., 335 F. 2d 340 (1964).

5. The removal of Martire as business manager of Local Union 1058 by the officers thereof, without prior proceedings by the Local or a vote of the members, was in violation of 29 U. S. C. A. 411, Section (5) *supra*.

6. Dante Martire is entitled to reinstatement as business manager of Local Union 1058, and to all the compensation, rights and benefits incident to said office from September 26, 1967.

7. In all other respects, plaintiff's complaint should be denied.

/s/ HERBERT P. SORG, *D. J.*

Dated: March 25, 1968.

ORDER

AND Now, this 25th day of March, 1968, it is hereby ordered, adjudged and decreed that defendant Local Union 1058 of the Laborers' International Union of North America and its officers:

1. Restore plaintiff as business manager of Local Union 1058;

2. Reimburse plaintiff for all wages or income, pension, welfare, insurance and other fringe benefits pertinent to his office as business manager of Local Union 1058 from and after September 26, 1967.

It is further ordered that the complaint be dismissed as to Laborers' District Council of Western Pennsylvania, and that all relief sought against Local Union 1058 other than that above set forth, be and the same is hereby denied.

/s/ HERBERT P. SORG, *D. J.*

cc: J. M. Maurizi, Esquire,
3113 Grant Bldg., Pittsburgh, Pa. 15219.

Leo I. Shapiro & Morton B. DeBroff, Esquires,
1201 Law & Finance Bldg., Pittsburgh, Pa. 15219.

Statutes Involved

Labor-Management Reporting and Disclosure Act of 1959; Section 101 (a) (5), 73 Stat. 523; Section 609, 73 Stat. 541; Section 401 (h), 73 Stat. 533; Section 301, 73 Stat. 530.

SECTION 101, 29 U. S. C. A. § 411 (a) (5)

Bill of rights; constitution and bylaws of labor organizations—Safeguards against improper disciplinary action.

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is consistent with the provisions of this section shall be of no force or effect.

SECTION 609, 29 U. S. C. A. §529

Prohibition on certain discipline by labor organization.

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof, to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

SECTION 401, 29 U. S. C. A. § 481 (h)

Terms of office and election procedures—Officers of national or international labor organizations; manner of election—Removal of officers guilty of serious misconduct.

If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

SECTION 301, 29 U. S. C. A. § 461

Reports—Filing and contents; annual financial report

(a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after September 14, 1959 or the imposition of any trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent or participation by the membership of the subordinate organization in the selection of delegates to represent such organizaton

in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 431 (b) of this title signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

Applicability of other laws.

(b) The provisions of sections 431 (c), 435, 436, 438, and 440 of this title shall be applicable to reports filed under this subchapter.

Penalty for violations.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

False statements and entries; failure to disclose material facts; withholding, concealing or destroying documents, books, records, reports, or statements; penalty.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals,

or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

Personal liability.

(e) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.